624(e) replace the prior model, under which government regulators dictated technological choices, with a market approach, under which commercial parties respond directly to consumer demand. Congress obviously recognized that excessive local regulation might impede technological development. The House Report explained, "The patchwork of regulations that would result from a locality-by-locality approach is particularly inappropriate in today's intensely dynamic technological environment." H.R. Rep. No. 204, 104th Cong., 1st Sess, pt. 1, at 110 (1995).

Congress was particularly concerned about conflicts and inconsistencies in local regulation, but the concern actually was part of a much broader effort to limit government intrusion into communications technology. In the area of equipment compatibility standards, for example, the FCC is instructed to adopt only the "minimal standards" necessary. One Senator succinctly described Congress's rationale in adopting a market-oriented approach to equipment compatibility standards:

> The risk associated with wide regulatory powers over technological issues in a time when we are seeing rapid technological change is that premature or overbroad FCC standards may interfere in the market-driven process of standardization or impede technological innovation itself . . . . [47 U.S.C. 544(a)] will permit the industry to set standards, not the FCC. That is keeping with the nature of this legislation as a whole.[25]

Earlier in the debate over communications reform, a Congressman made a similar observation about the importance of market forces to communications innovations:

> No matter how many Rhodes scholars you have in the White House, they will never tell the next Bill Gates to drop out of

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[25]142 Cong. Rec. S705 (daily ed. Feb. 1, 1995) (Statement of Sen. Ford)

> whatever school he or she is in now and invent the next revolution in the telecommunications industry. What is the lesson? Under this bill, the market, not the government, is going to tell us what the next wave of technology is."[26]

Congress obviously wanted to put questions of technological development in the hands of service providers, with the ultimate success or failure of a particular technology to be determined by the marketplace. In this context, it is perfectly logical that Congress wanted to curb the ability of local franchising authorities to dictate technical standards and performance. Accordingly, it is no longer permissible for LFAs to specify cable's transport architecture (such as 750 MHz or fiber-to-the-node), transport technology (such as digital or analog), subscriber premises equipment (such as converter/remote selection or attempts to prohibit/require scrambling and addressability), or technical performance (such as technical proof-of-performance tests). There is no reason in an increasingly competitive environment that a franchising authority should dictate a cable operator's technical infrastructure -- that responsibility should lie with the cable operator.

The *NPRM* does not contest the deregulatory thrust of Section 301(e), but expresses concern that Congress did not eliminate every statutory reference to franchising authorities being involved in technical review. Given the magnitude of the task, the failure to address these few remaining provisions may have been simple oversight. In any event, the other provisions cited in the *NPRM* are not necessarily inconsistent with the general deregulatory intent of the Section 301(e). Section 621, for example, which allows franchising authorities to "require adequate assurance that the cable operator has the financial, technical

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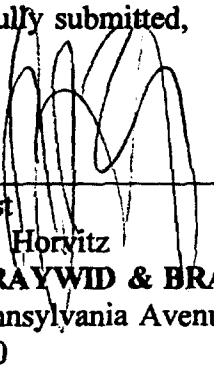
[26]141 Cong. Rec. H8281 (daily ed. August 2, 1995) (Statement of Rep. White.)

or legal qualifications to provide cable service,"[27] does not mean that the franchising authority can dictate technological choices. It is one thing to ascertain whether a franchise applicant has a basic understanding of cable technical matters, it is quite another to mandate specific technical standards. Likewise, the provision in Section 626 that an operator's franchise renewal proposal "shall contain such material as the franchising authority may require, including proposals for an upgrade of the cable system,"[28] does not mean that the franchising authority can dictate technological choices.

Respectfully submitted,



Paul Glist
Steven J. Horvitz
COLE, RAYWID & BRAVERMAN, L.L.P.
1919 Pennsylvania Avenue, NW
Suite 200
Washington, D.C. 20006
(202) 659-9750

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[27] 47 U.S.C. § 543(a)(4)(c).

[28] 47 U.S.C. § 546(a)(6)(2).

EXHIBIT A

Bresnan Communications Company, L.P.
Charter Communications, Inc.
Daniels Communications, Inc.
Halcyon Communications Partners
James Cable Partners, L.P.
Jones Intercable, Inc.
Rifkin & Associates, Inc.
TCA Cable TV, Inc.